IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 753 OF 1995
IN
B.C.C.C. S.C. SUIT NO. 7419 OF 1992.

1. Smt. Krishnabai, Wd/o.
Mahabirprasad Mantri (Deleted)
2. Sureshchandra Mahabirprasad Mantri ..... Appellant
verses
1. Chandrarekha Mantri,
2. Harishchandra Mahabirprasad Mantri (Deleted)
3.Kusum Harishchandra Mantri
4.Sharadchandra Harishchandra Mantri ... Respondents.

Mr. G.S. Godbole with Mr. Bharat Vaishnawa and A. B. Dubey i/b. N.N. Vaishnawa for Appellant

Mr. M. P. S. Rao with Mr. Rai Mehta i/b. Crawford Bayley & co., for respondents

CORAM :- D. G. KARNIK **J.**

DATE :- 17/8/2006

ORAL JUDGMENT:

1. This appeal is directed against the judgment and order dated 30th March 1994 passed by the Additional Principal Judge, City Civil Court, Mumbai, holding that he had no jurisdiction to entertain and try the suit, being Suit no. 7419 OF 1992, filed by the appellants against respondent no.1 and others.

2. The suit related to Flat no.19, situate on the 2nd floor, Maheshwari Mansion, 'C' Wing, 34 Napensea Road, Mumbai 400 026., (hereinafter referred to as “the suit flat”). The suit flat was taken on rent by Mahavirprasad Mantri, the late husband of original appellant no.1. The respondent no.1 is the grand daughter of late Mahabirprasad. In the plaint the appellants alleged that the respondent no. 1, on her marriage, started living with her husband at Vapi. On separation from husband the respondent no.1 started living with her parents i.e, in flat no. 36 in the same building. However, because of the strained relations with her step mother the respondent no.1 had to leave that premises. Appellant no.1, being the grand mother, took pity on the respondent no.1 and allowed her to stay in a room in the suit flat till her divorce proceedings were over and she got remarried or made alternate arrangements. The respondent no.1 was allowed to live in one room in the suit flat gratuitously. On account of differences the gratuitous licence was terminated. The respondent no.1 however, continued to occupy one room in the said flat and therefore a suit was filed for possession in the City Civil Court, Mumbai. The respondent no.1 contested the suit contending that she was living in the suit flat as a member of the family of her grandfather Mahabirprasad and on his death she had inherited the tenancy by virtue of section 5 (1)(c)of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short 'The Bombay Rent Act').
3. The respondent no.1 also contended that the City Civil Court at

Bombay had no jurisdiction to entertain and try the suit. Accordingly, the City Civil Court framed an issue of its jurisdiction and tried it as a preliminary issue. The respondent no.1 contended that as the appellants had alleged that the respondent no.1 was a licensee, though gratuitous, the suit was triable exclusively by the Small Causes Court. Section 41 of the Presidency Small Cause Courts Act, 1882 provides that in respect of suits and proceedings between lessor and lessee or landlord and tenant relating to the recovery of possession of an immovable property situated in Greater Mumbai, or relating to the recovery of any licence fee or charges or rent therefor, the Small Cause Court would have jurisdiction to entertain and try the suit, irrespective of the value of the subject matter of such suits or proceedings. In view of section 41 of the Presidency Small Cause Courts Act, 1882, the City Civil Court held that the suit for recovery of possession against the respondent no.1, who was a gratuitous licensee, was required to be filed in the Small Causes Court and the City Civil Court had no jurisdiction to try the suit. That decision is impugned in this appeal.

4. The question whether the City Civil Court would have jurisdiction to try a suit for possession against a gratuitous licensee was subject matter of controversy in different Courts on different occasions. In the decisions rendered in **Contrad Dias of Bombay vs. Joseph Dias of Bombay** reported in AIR 1995 Bombay 210, **P. Vijaykumar vs. V.C.Gopalkrishnan**, reported in 1997(2) Mh. L.J. 35 and in **Shrikrishna Bhau Parab vs. Dr. Mrs. Roshan S. Boyce**, reported in 1995(1) BCR 429

this court had taken a view that such a suit would not fall under section 41 of the Presidency Small Cause Courts Act, 1882 and would be triable by a Civil Court. On the other hand in **Kirtikumar Vallabhdas Gajaria and anr. vs. Champaben Narottam Kapadia and ors**., reported in 1998(2) Mh. .J. 597, this court took a contrary view and held that a suit for possession even against a gratuitous licensee would be required to be filed in the Small Causes Court in view of Section 41 of the Presidency Small Cause Courts Act, 1882. The matter was therefore referred to a larger Bench. In **Ramesh Dwarkadas Mehra vs. Indravati Dwarkadas Mehra** reported in 2001(4) Mh.L.J. 483 the Division Bench has authoritatively held that a suit by licensor for possession against a gratuitous licensee would not be triable by the Small Causes Court under Section 41 of the Presidency Small Cause Courts Act, 1882 but such suit should be filed before the City Civil Court or the High Court, depending on the value of the subject matter of the suit.

5. In view of this authoritative decision of the Division Bench of this Court the impugned judgment cannot be sustained. The decision of the City Civil Court that it has no jurisdiction and only the Small Cause Court has the jurisdiction to entertain and try the suit is contrary to the law laid down by the Division Bench of in Ramesh Dwarkadas Mehra vs. Indravati Dwarkadas Mehra (supra) and therefore needs to be set aside. Accordingly the appeal is allowed. The impugned judgment and order is set aside and the matter is remanded back to the City Civil Court

for trial in accordance with law. Considering the fact that the suit has been filed as far back as in the year 1982, it would be appropriate to issue a direction for expeditious disposal of the suit. Accordingly the City Civil Court is directed to dispose of the suit expeditiously and in any event within a period of six months.

(D. G. KARNIK **J**)